

2025 LiveLaw (SC) 176

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
ABHAY S. OKA; J., UJJAL BHUYAN; J.
JANUARY 29, 2025**

**CRIMINAL APPEAL NO(S).462 OF 2025 (ARISING OUT OF S.L.P. (CRIMINAL) NO(S).8368/2019)
HITESH VERMA *versus* M/S HEALTH CARE AT HOME INDIA PVT. LTD. & ORS.**

Negotiable Instruments Act, 1881; Section 141 - Vicarious Liability of Directors - Twin Requirements for Prosecution – Held, for an offence under Section 141 of the N.I. Act, 1881, involving dishonour of a cheque by a company, the complaint must allege that the accused person was both in charge of and responsible to the company for the conduct of its business. These are distinct requirements, and both must be explicitly stated in the complaint. Only the signatory of the cheque can be held liable, and in the absence of allegations that the appellant was in charge of the company’s business, prosecution under Section 141(1) cannot be sustained. The Court set aside the High Court’s order dismissing the appellant’s plea to quash the complaint and allowed the appeal, without commenting on the merits of the case against other accused. (Para 5)

For Petitioner(s): Mr. Abhishek Atrey, AOR Mr. Rupesh Kumar Tyagi, Adv. Ms. Ambika Atrey, Adv. Ms. Jyoti Verma, Adv.

For Respondent(s): Mr. Alok Krishna Agarwal, Adv. Mrs. Petal Chandhok, Adv. Mr. Gaichangpou Gangmei, Adv. Mr. Yimyang Longkumer, Adv. For M/S. Trust Legal, AOR Mr. Awanish Sinha, AOR

ORDER

1. Leave granted.
2. Heard the learned counsel appearing for the parties.
3. The appellant is arraigned as accused no.3 in the complaints filed by the first respondent under Section 138 of the Negotiable Instruments Act, 1881 (for short, “the 1881 Act”). Admittedly, the appellant is not a signatory to the cheque. Paragraphs 4 and 5 of the complaints subject-matter of these Appeals are similar which read thus:
“4. It is submitted that the Accused No.1 is a Company incorporated under the provisions of the Companies Act, 1956 and having its registered office at B-3, Basement, Building No.4, Bhanot Apartment, LSC, Pushp Vihar, Madangir, Delhi 110 062 and is engaged in wholesale supply of pharmaceuticals and other related services. Printout of the details of the Accused No.1 as available with the Registrar of Companies on the website of Ministry of Corporate Affairs is attached herewith and marked as ANNEXURE C-2.
5. It is stated that the Accused No.2 and Accused No.3 are the Directors and Authorized Signatories of the Accused No.1 and are solely responsible for the day to day business activities and operations of Accused No.1. It is pertinent to note that the Accused No.2 under instructions and direction from the Accused No.3 had signed the Cheque being no.214804 on behalf of the Accused No.1 in discharge of the legal liability arising out of the Invoice bearing no.DEL/1819/0624 dated 31.08.2018.”
4. As the appellant is not a signatory to the cheque, he is not liable under Section 138 of the 1881 Act. As it is only the signatory to the cheque is liable under Section 138, unless the case is brought within the four corners of Section 141 of the 1881 Act, no other person can be held liable. Section 141 reads thus:
“141. Offences by companies.—(1) If the person committing an offence under section 138 is a company, every person who, at the time the offence was committed, was in charge of, and was

responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any person liable to punishment if he proves that the offence was committed without his knowledge, or that he had exercised all due diligence to prevent the commission of such offence:

Provided further that where a person is nominated as a Director of a company by virtue of his holding any office or employment in the Central Government or State Government or a financial corporation owned or controlled by the Central Government or the State Government, as the case may be, he shall not be liable for prosecution under this Chapter.

(2) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section, —

(a) “company” means any body corporate and includes a firm or other association of individuals; and

(b) “director”, in relation to a firm, means a partner in the firm.”

5. There are twin requirements under sub-Section (1) of Section 141 of the 1881 Act. In the complaint, it must be alleged that the person, who is sought to be held liable by virtue of vicarious liability, at the time when the offence was committed, was in charge of, and was responsible to the company for the conduct of the business of the company. A Director who is in charge of the company and a Director who was responsible to the company for the conduct of the business, are two different aspects. The requirement of law is that both the ingredients of sub-Section (1) of Section 141 of the 1881 Act must be incorporated in the complaint. Admittedly, there is no assertion in the complaints that the appellant, at the time of commission of the offence, was in charge of the business of the company. Therefore, on a plain reading of the complaints, the appellant cannot be prosecuted with the aid of sub-Section (1) of Section 141 of the 1881 Act.

6. Accordingly, the impugned orders are set aside and the order taking cognizance of the complaints filed by the first respondent stands quashed and set aside only as against the present appellant who is arraigned as accused no.3. We make it clear that we have made no adjudication on the merits of the complaints and all issues are left open to be decided by the Trial Court.

7. The Appeals are, accordingly, allowed on the above terms.